

Before the  
Federal Communications Commission  
Washington, DC 20554

2001 SEP 17 P 5:00

In the Matter of )  
 )  
Request for Waiver by )  
 )  
E-Rate Central )  
Plandome, New York )  
 )  
Federal-State Joint Board on )  
Universal Service )  
 )  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

RECEIVED  
File Nos. SLD-33699, 84909, 1275,  
84495, 13397

CC Docket No. 96-45

CC Docket No. 97-21 ✓

**ORDER**

Adopted: September 12, 2001

Released: September 14, 2001

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau (Bureau) is a Request for Waiver filed by E-Rate Central, Plandome, New York, seeking review of the decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) dismissing certain Funding Year 1 appeals as untimely.<sup>1</sup> E-Rate Central asks the Commission to retroactively waive application of the 30-day appeal deadline for all Funding Year 1 appeals submitted on or before June 30, 1999, and in particular for the five appeals captioned above, and to direct SLD to consider these appeals on their merits.<sup>2</sup> E-Rate Central also asks us to ensure that sufficient funds will be available should these appeals be successful by authorizing SLD to apply any Funding Year 1 committed funds that went unused to the funding of successful Funding Year 1 appeals if necessary.<sup>3</sup> For the reasons discussed below, we deny part of the Request for Waiver, and dismiss the remaining part.

2. Under section 54.720 of the Commission's rules, any party seeking review of a decision issued by the Administrator must file its request with the Commission or SLD within 30

<sup>1</sup> Letter from Winston E. Himsworth, E-Rate Central, to Federal Communications Commission, filed August 12, 1999 (Request for Waiver). We note that although E-Rate Central styles its pleading as a Request for Review, the primary relief sought would require a waiver of Commission rules. Thus, we refer to E-Rate Central's pleading as a Request for Waiver.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

days of the issuance of the decision of which review is sought.<sup>4</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>5</sup>

3. E-Rate Central is an educational services company that has run a program on behalf of the New York State Education Department assisting applicants with the discount application process.<sup>6</sup> E-Rate Central has also worked with the Board of Cooperative Educational Services of Nassau County (BOCES) to provide discounts for BOCES and the 56 public school districts in Nassau County, New York.<sup>7</sup> Five of these districts, Bellmore, Carle Place, East Meadow, East Rockaway, and Port Washington, received adverse funding decisions from SLD in Funding Year 1 and filed untimely appeals.<sup>8</sup> On behalf of these districts, and other applicants similarly situated, E-Rate Central filed the pending Request for Waiver.<sup>9</sup>

4. E-Rate Central argues that a waiver of the 30-day appeal deadline for Funding Year 1 appeals is justified by circumstances that existed during that year.<sup>10</sup> Specifically, E-Rate Central alleges that there was general applicant confusion regarding the rules of the program during its first year, that SLD loosely enforced a number of other deadlines during that period, and that the appeal guidelines themselves did not clearly notify applicants of the 30-day deadline.<sup>11</sup>

5. Insofar as E-Rate Central seeks waivers on behalf of unspecified Funding Year 1 applicants, we find that the pleading has not presented "a full statement of relevant, material facts" as required by the Commission's rules.<sup>12</sup> E-Rate Central's petition describes a broad class of applications, which includes all Funding Year 1 applicants who filed untimely appeals. However, a waiver is appropriate only if special circumstances warrant a deviation from the

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<sup>4</sup> 47 C.F.R. § 54.720.

<sup>5</sup> 47 C.F.R. § 1.7.

<sup>6</sup> Request for Review at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, n.1. See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bellmore Union Free School District, dated June 22, 1999 (Administrator's Decision on Bellmore Appeal); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Carle Place Union Free School District, dated June 22, 1999 (Administrator's Decision on Carle Place Appeal); Letter from Schools and Libraries Division, Universal Service Administrative Company, to East Meadow School District, dated June 22, 1999 (Administrator's Decision on East Meadow Appeal); Letter from Schools and Libraries Division, Universal Service Administrative Company, to East Rockaway School District, dated June 22, 1999 (Administrator's Decision on East Rockaway Appeal); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Port Washington UFSD, dated July 6, 1999 (Administrator's Decision on Port Washington Appeal).

<sup>9</sup> Request for Review at 2.

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.*

<sup>12</sup> 54 C.F.R. § 54.721(b).

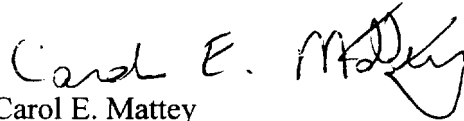
general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>13</sup> A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> We find that this standard is not satisfied by general confusion allegedly experienced by unidentified applicants, nor would it be satisfied if we found that SLD had not given notice of the appeal deadline, because that deadline was clearly established in Commission regulations.<sup>15</sup> We therefore deny this part of the Request for Waiver.

6. We also find no basis for waiving our rules regarding the appeal deadline for the five specified applicants. E-Rate Central has not pointed to any special circumstances in connection with any of the five named applicants beyond referring to the same allegations of general applicant confusion and lack of notice that we have discussed above and found insufficient to justify a waiver of the appeal deadline. Further, after reviewing the individual record in each of the specified applications, we have found nothing that would support a waiver. Therefore, we also deny the Request for Waiver made on behalf of each of the named applicants.

7. Because we do not grant E-Rate Central's request for a retroactive waiver of the 30-day appeal deadline for Funding Year 1 applicants who filed untimely appeals, E-Rate Central's request that we also authorize new appeal funding procedures for these applicants is moot. We therefore dismiss this part of the Request for Waiver as well.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed E-Rate Central, Plandome, New York, on August 12, 1999, is DENIED-IN-PART AND DISMISSED-IN-PART.

FEDERAL COMMUNICATIONS COMMISSION

  
Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> *Id.*

<sup>15</sup> See 47 C.F.R. § 54.720.